



Ein cyf/Our ref: MB/FM/5937/11

Mr David Melding AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

| November 2011

Dear David

The Assembly's Standing Orders require the Constitutional and Legislative Affairs Committee to report on any instrument which is not in the Welsh language. The removal of the provision prohibiting your Committee's reporting on instruments also subject to a Parliamentary procedure means that, under the new Standing Orders any composite or joint instrument will also attract a report on those grounds.

Your Committee has reported on those grounds in respect of instruments also subject to a Parliamentary procedure on four occasions and I thought it would be helpful if I explained the Welsh Government's position with regard to the making of statutory instruments which are also subject to a Parliamentary procedure in order to inform the Committee's future consideration of such instruments.

I would firstly seek to assure you that where Welsh Ministers have the power to make subordinate legislation for Wales the presumption will be that, unless there are good reasons to do otherwise, that power will be exercised via a Wales-only Statutory Instrument, and that that instrument will be bilingual unless the criteria in the Welsh Ministers' Welsh Language Scheme under section 78 of the Government of Wales Act 2006 dictates otherwise

However, there are occasions where making instruments on a composite basis with the relevant UK Minister is the most appropriate approach. This may be, for example:

where separate England and Wales instruments would each have a cross-border effect that might lead to confusion for those affected;

for reasons of expediency, e.g. to facilitate the avoidance of infraction when transposing EU obligations in order to avoid infraction;

in cases of emergency where instruments must be brought into force very quickly;

or in cases where, because of the nature of the provision made by the instrument, the legislation is more accessible if made on an England and Wales basis.

As you are aware the UK Parliament will not scrutinise general statutory instruments in languages other than in English.

While the Government is committed to the making of legislation for Wales on a bilingual basis we also need to consider on occasion the option of making composite instruments where this represents the best use of limited and often stretched resources. For these reasons the presumption should also be that we will not produce retrospective Welsh translations which cannot have the force of law.

I hope that this letter clarifies the Government's position on this matter.

Yours sincerely

A handwritten signature in black ink, appearing to be 'C. Jones', with a stylized flourish at the end.

CARWYN JONES